TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 207.

HENRY A. TILDEN AND MOSES Y. TILDEN, PLAINTIFFS IN ERROR,

vs.

CHAUNCEY B. BLAIR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 3, 1873.

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1 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Chauncey B. Blair, plaintiff, and Henry A. Tilden and Moses Y. Tilden, defendants, a manifest error hath happened, to the great damage of the said Henry A. Tilden and Moses Y. Tilden, defendants, as is said, and as appears by complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capital, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the 2 Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this fifth day of April, in the year of our Lord one thousand eight hundred and seventy-three and of the Independence of the United States the ninety-seventh.

KENNETH G. WHITE,
Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit.

The foregoing writ is allowed.

SAM'L BLATCHFORD,
District Judge.

APRIL 5TH, 1873.

2 U. S. circuit court, southern dist. of New York.

CHAUNCEY B. BLAIR
vs.
HENRY A. TILDEN & MOSES Y. TILDEN.

By virtue of the foregoing writ of error, and in obedience thereto, I, Kenneth G. White, clerk of the circuit court of the United States for the southern district of New York in the second circuit, do hereby certify that the following pages, numbered from one to inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Chauncey B. Blair, plaintiff, vs. Henry A. Tilden and Moses Y. Tilden, defendants, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 24th day of September, in the year of our one thousand eight hundred and seventy-three, and of the Independence of the said United States the ninety-eighth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

Filed Ap'l 7, 1873.

1 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Chauncey B. Blair, plaintiff, and Henry A. Tilden and Moses Y. Tilden, defendants, a manifest error hath happened, to the great damage of the said Henry A. Tilden and Moses Y. Tilden, defendants, as is said, and as appears by complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capital, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the 2 Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

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KENNETH G. WHITE,
Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit.

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SAM'L BLATCHFORD,
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2 U. S. circuit court, southern dist. of New York.

CHAUNCEY B. BLAIR
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By virtue of the foregoing writ of error, and in obedience thereto, I, Kenneth G. White, clerk of the circuit court of the United States for the southern district of New York in the second circuit, do hereby certify that the following pages, numbered from one to inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Chauncey B. Blair, plaintiff, vs. Henry A. Tilden and Moses Y. Tilden, defendants, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 24th day of September, in the year of our one thousand eight hundred and seventy-three, and of the Independence of the said United States the ninety-eighth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

Filed Ap'l 7, 1873.

3 United States circuit court for the southern district of New York.

CHAUNCEY B. BLAIR
v.
HENRY A. TILDEN AND MOSES Y. TILDEN.

Pleas in the circuit court of the United States for the southern district of New York in the second circuit of the term of October, 1869, to wit, on the 19th day of January, 1870.

Witness the Hon. Lewis B. Woodruff, circuit judge; George F. Betts, clerk.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, on the 19th day of January, 1870, in the circuit court of the United States of America for the southern district of New York, came Chauncey B. Blair, by Charles D. Burrill, his attorney, and brought into the said court his certain declaration against Henry A. Tilden and Moses Y. Tilden, being in custody, &c., of a plea of trespass on the case upon the promises and which declaration follows in these words, that is to say:

4 Circuit court of the United States, southern district of New York.

Nineteenth day of January, one thousand eight hundred and seventy.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Chauncey B. Blair, plaintiff in this suit, by Charles D. Burrill, his attorney, complains of Henry A. Tilden and Moses Y. Tilden, composing the firm of Tilden & Co., defendants herein, in custody, &c., of a plea of trespass on the case upon promises. For that whereas one W. T. Pelton heretofore, to wit, on the 4th day of August, A. D. 1869, at Chicago, in the State of Illinois, made a certain bill of exchange in writing, bearing date the day and year aforesaid, and then and there directed said bill of exchange to the defendants under their said firm name of Tilden & Co., by which said bill of exchange the said Pelton requested said defendants, sixty days after the date thereof, to pay to his, said Pelton's, own order the sum of five thousand dollars for value received, and then and there endorsed said bill of exchange in blank, and the said bill of exchange the said defendants, under their said firm name of Tilden & Co., accepted in writing and thereby ordered and appointed the said sum of money in the
5 said bill of exchange mentioned to be paid at the bank of North America, in said city of New York; that said bill of exchange, so endorsed and accepted, was afterwards, for value received, and before the payment of the said sum of money therein specified, transferred and delivered to the said plaintiff; and the said plaintiff avers and in fact says that, afterwards, when said bill of exchange became due and payable according to the tenor and effect thereof, to wit, on the sixth day of October, in the year aforesaid, the said bill of exchange was duly presented for payment at the place where the same was by said bill of exchange made payable, and payment thereof demanded and refused; of all which said several promises said defendants afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, had notice; by

reason whereof, and according to the usage and custom of merchants, the said defendants then and there became liable to pay to the said plaintiff the said sum of money in the said bill of exchange specified according to the tenor and effect of the said bill of exchange and of the acceptance thereof; and being so liable the said defendants, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay unto the said plaintiff the said sum of money in the said bill of exchange specified, according to the tenor and effect of the said bill of exchange and of the said acceptance thereof.

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And whereas, also, the said defendants afterwards, to wit, on the day and at the place last aforesaid, to wit, the 6th day of October, 1869, at the city of New York, in the county of New York aforesaid, were indebted to the said plaintiff in the sum of ten thousand dollars lawful money of the United States of America, for money before that time lent and advanced by the said plaintiff to the said defendants, and at the special request of the said defendants, and for other money by the said plaintiff before that time paid, laid out, and expended for the said defendants, and at the like request of the said defendants, and for other money by the said defendants, before that time had and received to and for the use of the said plaintiff, and being so indebted the said defendants, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in this count mentioned, when they, the said defendants, should be thereunto afterwards requested.

7

And whereas, also, the said defendants afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendants to the said plaintiff, and then and there being in arrear and unpaid; and, upon such accounting, the said defendants then and there were found to be in arrear and indebted to the said plaintiff in the further sum of ten thousand dollars, for like lawful money as aforesaid, and being so found in arrear and indebted to the said plaintiff, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year aforesaid, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff, well and truly to pay into the said plaintiff the said sum of money last above mentioned, when they, the said defendants, should be thereunto afterwards requested.

Nevertheless the said defendants although often afterwards requested so to do, hath not as yet paid the said several sums of money above mentioned or any or either of them, or any part thereof to the said plaintiff; the said defendants have hitherto altogether refused and still doth refuse, to the damage of the said plaintiff of ten thousand dollars; and therefore the said plaintiff brings suit, and so forth.

8

CHARLES D. BURRILL,
Plaintiffs' Attorney.

And thereupon the said defendants, by E. A. Doolittle, their attorney, pleaded to the said declaration in the words and figures following, that is to say:

In the circuit court of the United States in and for the southern district of New York.

CHAUNCEY B. BLAIR
against
HENRY A. TILDEN AND MOSES Y. TILDEN.

I. And the said defendants, Henry A. Tilden and Moses Y. Tilden, citizens of the State of New York, by Edward A. Doolittle, their attorney, come and defend the wrong and injury, when, &c., and say that they did not, nor did either of them, undertake and promise in manner and form as the said plaintiff hath above thereof complained
9 against them, and of this they put themselves upon the country. And the plaintiff doth the like, &c.

II. And for a further plea in this behalf, these defendants, by leave of the court here for that purpose first had and obtained according to the statute in such case made and provided, as to the first count in the said declaration, say that the plaintiff ought not to have or maintain his action aforesaid thereof against these defendants, or against either of them, because they say that the said bill of exchange set forth in said first count of said declaration was drawn and made by one W. T. Pelton, the drawer thereof, as and for his accommodation, without any funds, property, or effects in the hands of these defendants, or of either of them, applicable to the payment thereof, or against which the same was drawn.

And these defendants, at or about the time the same bears date and before the same was endorsed, negotiated, or had any valid inception at the city of New York, where the same is made payable, accepted said bill of exchange as accommodation acceptors, without any funds, property, or effects in their hands, or in the hands of either of them, belonging to said Wm. T. Pelton, or against which the same was drawn, solely for the accommodation of said William T. Pelton, and with-
10 out any consideration for such acceptance, and delivered the same to said W. T. Pelton, so accepted as aforesaid, without any consideration therefor, and these defendants never received, nor did said W. T. Pelton ever give or pay these defendants any consideration for accepting the same.

And afterwards and before said bill of exchange had been endorsed or negotiated or had any valid inception, and while the same was still the property of said W. T. Pelton, and on or about the 4th day of August, 1869, at the city of Chicago, in the State of Illinois, it was corruptly and against the form of the statute in such case made and provided agreed, by and between the said W. T. Pelton and the said plaintiff, that he, said plaintiff should lend and advance to the said W. T. Pelton a certain sum of money, to wit, the sum of $4,737.50, and should forbear and give day of payment of said sum of $4,737.50 from the time of lending and advancing the same until and upon a certain other time, to wit, the 6 day of October, 1869; and that for the forbearing and giving day of payment of said sum of $4,737.50 said W. T. Pe'ton should give and pay to the said plaintiff a certain sum of money, to wit, a per centum of two and one-half (2½) per cent. per month, to wit, the
11 sum of $262.50; and for the securing of the payment of said sum of $4,737.50 so to be lent and advanced as aforesaid, together with the said further sum of $262.50, on the said sixth day of October, 1869, the said W. T. Pelton should duly endorse and deliver the said bill of exchange so accepted and endorsed as aforesaid in the said first count mentioned.

And the said defendants further say that in pursuance and in part performance of said corrupt and unlawful agreement the said W. T. Pelton afterwards, and on or about the said 4th day of August, 1869, to wit, at Chicago aforesaid, did duly endorse said bill of exchange in said first count mentioned, and delivered the same so made, accepted, and endorsed as aforesaid to the said plaintiff, and the said plaintiff then and there accepted and received the said bill of exchange on the terms and conditions aforesaid, well knowing the same to have been accepted for the accommodation of said W. T. Pelton as aforesaid; and in further pursuance of said corrupt, unlawful, and usurious agreement the said plaintiff afterwards, to-wit, on the day and year last aforesaid, at Chicago aforesaid, did lend and advance to the said W. T. Pel-
12 ton the said sum of $4,737.50 and no more, and said plaintiff never gave, and said W. T. Pelton never received any other different or greater sum or amount or consideration whatever for said bill of exchange, although the same had not to exceed sixty-three days to run before the same would mature and become due and payable. And the said defendants further say that the said sum of two hundred and sixty-two $\frac{50}{}$ dollars ($262.50) so agreed to be given and paid by said W. T. Pelton to the said plaintiff for such loan and forbearance as aforesaid and so secured as aforesaid, exceeds the rate of seven dollars for the forbearing of one hundred dollars for a year, contrary to the statute of the State of New York in such case made and provided, the place where said bill of exchange was accepted and made payable as aforesaid, and also exceeds the rate of ten dollars ($10.00) for the forbearing of one hundred dollars for one year, contrary to the statute in such case made and provided in and for the State of Illinois, where the said bill of exchange was negotiated.

Whereby and by force of the statutes in such case made and provided, the said bill of exchange was and is wholly void, and this the said defendants are ready to verify.

Wherefore they pray judgment if the said plaintiff ought to have or maintain his action aforesaid against these defendants or either of them.

E. A. DOOLITTLE,
Defendant's Attorney, No. 3 Pine street, N. Y.

13 United States circuit court.

CHAUNCEY B. BLAIR
against
HENRY A. TILDEN AND MOSES TILDEN.

And the said plaintiff, as to the plea of the said defendants by them secondly above pleaded, say: That the said plaintiff, by reason of anything by the said defendants in that plea alleged, ought not to be barred from having or maintaining his aforesaid action thereof against the said defendants, because, he says, that the bill of exchange in the first count of the declaration mentioned was not drawn nor accepted by the defendants without funds, or for the accommodation of W. T. Pelton in that behalf, made or delivered to the said last-named W. T. Pelton without consideration, but was made and accepted and delivered upon a good and valuable consideration, and was a valid and subsisting obligation in the hands of the said W. T. Pelton, the payee thereof, against the said defendants; and that there was no such corrupt or usurious agreement or usurious consideration as in the said plea alleged; and that the said bill of exchange was not endorsed or delivered to this

14 plaintiff in pursuance of the agreement or for the consideration in that behalf in said plea stated; and that the sum in that behalf in said plea alleged was not the consideration of the endorsement and delivery of said bill of exchange to this plaintiff; and that the sum of money therein alleged to have been agreed to be paid or given was not, nor was any other sum whatever, given for any alleged loan or forbearance for the time specified or for any other time; and that the said agreement or transaction in the said plea alleged was not in violation or contrary to the statute of the State of New York or the State of Illinois; and that the plaintiff had not, at the time the said bill was so endorsed and delivered to him, as in the first count of the declaration stated, any notice of any alleged want of consideration for the drawing, acceptance, or endorsement of the said bill of exchange; and this he, the said plaintiff, prays may be enquired of by the country, and so forth.

CHARLES D. BURRILL,
Plaintiff's Attorney.

15 U. S. circuit court.

CHAUNCEY B. BLAIR
vs.
HENRY A. TILDEN.

And the said defendants, as to the replication of the plaintiff whereof he hath put himself on the country, doth the like.

E. A. DOOLITTLE,
Att'y for Defendants.

Therefore the issues above joined are ordered to be tried at a circuit court appointed to be held at the court-house in the city of New York, on the 24th day of October, 1872, at which day and place last above mentioned, before the honorable William D. Shipman, one of the judges of the said court, the respective parties appeared, by their respective attorneys above mentioned, and filed with the clerk of the court a stipulation in writing, signed by them respectively, waiving a jury and consenting that the said action and the issues therein might be tried by a court without a jury; whereupon the said court heard and con-
16 sidered the allegations and proofs offered by the respective parties, and found and decided as follows:

U. S. circuit court, southern district of New York.

CHAUNCEY B. BLAIR
vs.
HENRY A. TILDEN AND MOSES Y. TILDEN, partners, under the firm-name of Tilden and Company.

This cause was tried by the court, the parties thereto having waived a trial by jury, as per stipulation on file.

The court finds the following facts:

First. At the time of the several transactions referred to in the pleadings in this case and at the time of the commencement of this suit, the plaintiff was a citizen and resident of the State of Illinois, and the defendants, respectively, were at the times aforesaid citizens and residents of the State of New York, and were partners, doing business at New

Lebanon, in said last-named State, under the firm-name of Tilden & Co.

17 Second. That the draft upon which this suit is founded was in the words and figures following, to wit:

$5,000.] CHICAGO, *August* 4, 1869.

Sixty days after date pay to the order of myself five thousand dollars, value received, with exchange, and charge to account of

W. T. PELTON.

To Messrs. TILDEN & Co., *New Lebanon, N. Y.*

[U. S. internal-revenue stamp $2.50 cancelled.]

(Written across the face:) Accepted payable at the Bank of North America, New York.

TILDEN & CO.

(Endorsed:) Pay to the order of A. C. Coventry.

W. T. PELTON.
A. C. COVENTRY.

Third. That said draft was drawn by said Pelton, at Chicago, in the State of Illinois, and sent by him to the defendants at said New Lebanon, and there accepted by them, and so accepted was by them returned to said Pelton, at said Chicago, and that said Pelton at the same time said transactions took place was, and until long after the maturity of said draft, continued to be a resident of said Chicago, and engaged in business there.

Fourth. That said draft was so accepted and returned to said Pelton, as aforesaid, for the purpose of being negotiated in said State of Illinois, and in order that the proceeds might be used by him in his busi-

18 ness in that State, and in the State of Michigan.

Fifth. That said Tilden & Co. accepted said draft solely for the accommodation of said Pelton, in order to aid him in raising funds for carrying on his business, without any consideration or security therefor, and without any funds in their hands to protect the same.

Sixth. That said Pelton was the nephew of one or both of the defendants, and the latter accepted the draft in suit, and had also accepted at other times similar drafts, all for the accommodation of said Pelton, and with the understanding with him that they were to be discounted at a certain bank in Chicago, (a bank with which this plaintiff had no connection,) and that said Pelton should take up the drafts at maturity.

Seventh. That plaintiff, at the time he discounted said draft, had no knowledge whatever of the arrangement or understanding set forth under the sixth head of this finding of facts, or that said draft was mere accommodation-paper accepted by the defendants without consideration or without security or funds in the hands of the drawers to protect the same.

19 Eighth. That said Pelton endorsed said draft, and delivered the same to said A. C. Coventry, at said Chicago, for the purpose of having the latter effect the negotiation thereof for the benefit of said Pelton, and the said Coventry, through a firm of note brokers, sold said draft to the plaintiff in this suit, at said Chicago, for the sum of four thousand eight hundred and twenty-five dollars and no more.

W. D. SHIPMAN. *Judge.*

Conclusions of law.

SHIPMAN, J.

First. By accepting the draft in question, and returning it to the possession of the drawee, the defendants empowered him to negotiate the same, and put it in circulation by any valid transfer.

Second. The negotiation and transfer having been made in Illinois, the validity of that contract is to be determined by the law of that State.

Third. That contract, by the law of Illinois, was valid except as to the interest reserved. That interest having exceeded the rate of ten per centum per annum was forfeited, and cannot be collected either from the drawer or the acceptors. As to that the contract with the plaintiff was void as to both. As to the principal it was valid as to both. (Sessions laws of Illinois, January 31st, 1859; p. 45)

Fourth. The plaintiff is entitled to judgment for the sum of four thousand eight hundred and twenty-five dollars, ($4,825,) being the amount of principal, less the interest illegally reserved, with costs.

W. D. SHIPMAN, *Judge.*

Therefore it is considered that the said plaintiff do recover against the said defendants the aforesaid sum of four thousand eight hundred and twenty-five dollars so awarded by the said court, and also one hundred dollars and sixty-five cents for his costs and charges by the said court now here adjudged to the said plaintiff, which said damages, costs, and charges, in the whole, amount to four thousand nine hundred and twenty-five dollars and sixty-five cents.

Judgment signed this 27th March, 1873.

R. E. STILWELL,
Dep. Clerk.

(Endorsed:) U. S. circuit court. Chauncey B. Blair vs. Henry A. Tilden, &c. Judgment roll.

CHARLES D. BURRILL,
Pl'ff's Att'y.

Filed M'ch 28, 1873.

U. S. circuit court.

CHAUNCEY B. BLAIR
vs.
HENRY A. TILDEN, ET AL.

On the trial of this cause, and on motion of E. A. Doolittle, in favor of, and after hearing John E. Burrill, esq., in opposition, ordered that defendant's attorney, be at liberty to amend his answer by inserting the actual amount of usury or interest reserved as proved, to wit, $175, instead of $262 50, and also, to insert the sum of $4,825 in the place, and stead of $4,737.50, whenever the same occurs in said answer, without costs, and answer is amended accordingly.

W. D. SHIPMAN, *Judge.*

(Endorsed:) U. S. circuit court. Blair vs. Tilden. Order to amend. E. A. Doolittle.

23 United States circuit court for the southern district of New York.

CHAUNCEY B. BLAIR
ag'st
HENRY A. TILDEN, AND MOSES Y. TILDEN. } Bill of exceptions.

This is an action upon a draft accepted by defendants. The complaint, answer, and replication are as follows:

Circuit court of the United States, southern district of New York.

Nineteenth day of January, one thousand eight hundred and seventy.

SOUTHERN DISTRICT OF NEW YORK, *ss.*:

Chauncey B. Blair, plaintiff in this suit by Charles D. Burrill, his attorney, complains of Henry A. Tilden and Moses Y. Tilden, composing the firm of Tilden & Co., defendants herein in custody, &c., of a plea of trespass on the case upon promises. For that whereas one W. T. Pelton heretofore, to wit, on the 4th day of August, A. D. 1869, at Chicago in the State of Illinois, made a certain bill of exchange in writing, bearing date the day and year aforesaid, and then and there di-
24 rected said bill of exchange to the defendants under their said firm-name of Tilden & Co., by which said bill of exchange the said Pelton requested said defendants, sixty days after the date thereof, to pay to his, said Pelton's, own order, the sum of five thousand dollars, for value received, and then and there endorsed said bill of exchange in blank and which said bill of exchange, the said defendants under their said firm-name of Tilden & Co., accepted in writing and thereby ordered and appointed the said sum of money in the said bill of exchange mentioned to be paid at the Bank of North America in said city of New York. That said bill of exchange, so endorsed and accepted, was afterwards, for value received and before the payment of the said sum of money therein specified, transferred and delivered to the said plaintiff.

And the said plaintiff avers, and in fact says, that afterwards, when said bill of exchange became due and payable according to the tenor and effect thereof, to wit, on the sixth day of October, in the year aforesaid the said bill of exchange was duly presented for payment, at the place where the same was by said bill of exchange made payable, and payment theref demanded and refused, of all of which said
25 several premises said defendants afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, had notice.

By reason whereof, and according to the usage and custom of merchants, the said defendants then and there became liable to pay to the said plaintiff the said sum of money in the said bill of exchange specified, according to the tenor and effect of the said bill of exchange and of the acceptance thereof; and, being so liable, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay unto the said plaintiff the said sum of money in the said bill of exchange specified, according to the tenor and effect of the said bill of exchange and of the said acceptance thereof.

And whereas, also, the said defendants, afterwards, to wit, on the day and at the place last aforesaid, to wit, the 6th day of October, 1869, at the city of New York, in the county of New York aforesaid, were indebted to the said plaintiff in the sum of ten thousand dollars lawful

money of the United States of America, for money before that
26 time lent and advanced by the said plaintiff to the said defendants, and at the special request of the said defendants, and for other money by the said plaintiff before that time paid, laid out, and expended for the said defendants, and at the like request of the said defendants; and for other money by the said defendants before that time had and received, to and for the use of the said plaintiff; and, being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in this count mentioned, when they, the said defendants, should be thereunto afterwards requested.

And whereas, also, the said defendants afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendants to the said plaintiff, and then and there being in arrear and unpaid, and upon such accounting the said defendants then and there were found
27 to be in arrear and indebted to the said plaintiff in the further sum of ten thousand dollars for like lawful money as aforesaid, and being so found in arrear and indebted to the said plaintiff, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last above mentioned, when they, the said defendants, should be thereunto afterwards requested.

Nevertheless, the said defendants, although often afterwards requested so to do, hath not, as yet, paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff, the said defendants have hitherto altogether refused, and still doth refuse, to the damage of the said plaintiff, of ten thousand dollars; and therefore the said plaintiff brings suit, and so forth.

CHARLES D. BURRILL,
Plaintiff's Attorney.

28 (Endorsed:) United States circuit court, southern district of New York. Chauncey B. Blair, plaintiff, Henry A. Tilden and Moses I. Tilden, defendants. Declaration. Charles D. Burrill, plaintiff's attorney. Filed January 24, 1870.

29 In the circuit court of the United States, in and for the southern district of New York.

CHAUNCEY B. BLAIR,
against
HENRY A. TILDEN AND MOSES Y. TILDEN.

I. And the said defendants, Henry A. Tilden and Moses Y. Tilden, citizens of the State of New York, by Edwin A. Doolittle, their attorney, come and defend the wrong and injury where, &c., and say that they did not, nor did either of them, undertake and promise in manner and form as the said plaintiff hath above thereof complained against them, and of this they put themselves upon the county. And the plaintiff doth the like, &c.

II. And for a further plea in this behalf, these defendants, by leave

of the court here for that purpose first had and obtained, according to the form of the statute in such case made and provided, as to the first count in the said declaration, say that the plaintiff ought not to have or maintain his action aforesaid thereof against these defendants, or against either of them, because they say, that the said bill of exchange
30 set forth in said first count of said declaration, was drawn and made by one W. T. Pelton, the drawer thereof as and for his accommodation, without any funds, property, or effects in the hands of these defendants, or either of them applicable to the payment thereof. or against which the same was drawn. And these defendants at, or about the time the same bears date, and before the same was endorsed, negotiated, or had any valid inception at the city of New York where the same is made payable, accepted said bill of exchange as accommodation acceptors, without any funds, property, or effects in their hands or in the hands of either of them, belonging to said William T. Pelton, or against which the same was drawn, solely for the accommodation of the said W. T. Pelton, and without any consideration for such acceptance, and delivered the same to said W. T. Pelton so accepted as aforesaid, without any consideration therefor, and these defendants never received, nor did said W. T. Pelton ever give or pay these defendants any consideration for accepting the same.

And afterward, and before said bill of exchange had been endorsed or negotiated, or had any valid inception, and while the same was
31 still the property of said W. T. Pelton, and on or about the 4th day of August, 1869, at the city of Chicago, in the State of Illinois, it was corruptly, and against the form of the statute in such case made and provided, agreed by and between the said W. T. Pelton and the said plaintiff, that he, said plaintiff, should lend and advance to the said W. T. Pelton a certain sum of money, to wit, the sum of $4,737.50, and should forbear and give day of payment of said sum of $4,737.50 from the time of lending and advancing the same, until and upon a certain other time, to wit, the 6 day of October, 1869; and that for the forbearing and giving day of payment of said sum of $4,737.50, said W. T. Pelton should give and pay to the said plaintiff a certain sum of money, to wit, a per centum of two and one-half (2½) per cent. per month, to wit, the sum of $262.50, and for the securing of the payment of said sum of $4,737.50, so to be lent and advanced, as aforesaid, together with the said further sum of $262.50, on the said sixth day of October, 1869, the said W. T. Pelton should duly endorse and deliver the said bill of exchange, and the said plaintiff should accept the said bill of exchange, so accepted and endorsed, as aforesaid, in the said first count mentioned.

32 And the said defendants further say, that in pursuance and in part performance of said corrupt and unlawful agreement, the said W. T. Pelton, afterward, and on or about the said 4 day of August, 1869, to wit, at Chicago aforesaid, did duly endorse said bill of exchange in said first count mentioned, and delivered the same, so made, accepted, and endorsed, as aforesaid, to the said plaintiff, and the said plaintiff then and there accepted and received the said bill of exchange, on the terms and conditions aforesaid, well knowing the same to have been accepted for the accommodation of said W. T. Pelton as aforesaid. And in further pursuance of said corrupt, unlawful, and usurious agreement, the said plaintiff afterward, to wit, on the day and year last aforesaid, at Chicago aforesaid, did lend and advance to the said W. T. Pelton, the said sum of $4,737.50, and no more, and said plaintiff never gave, and said W. T. Pelton never received, any other different or greater sum, or amount, or

consideration whatever, for said bill of exchange, although the same had not to exceed sixty-three days to run before the same would mature and become due and payable. And the said defendants further say, that the said sum of two hundred and sixty-two $\frac{50}{100}$ dollars ($262.50)
33 so agreed to be given and paid by said W. T. Pelton, to the said plaintiff for such loan and forbearance as aforesaid, and so secured as aforesaid, exceeds the rate of seven dollars for the forbearing of one hundred dollars for a year, contrary to the statute of the State of New York, in such case made and provided, the place where said bill of exchange was accepted and made payable, as aforesaid, and also exceeds the rate of ten dollars ($10.00) for the forbearing of one hundred dollars for one year, contrary to the statute in such case made and provided in and for the State of Illinois, where the said bill of exchange was negotiated.

Whereby, and by force of the statutes in such case made and provided, the said bill of exchange was and is wholly void; and this the said defendants are ready to verify.

Wherefore they pray judgment if the said plaintiff ought to have or maintain his action aforesaid against these defendants or either of them.

E. A. DOOLITTLE,
Defendants' Attorney, No. 3, Pine Street, N. Y.

34 (Endorsed:) U. S. circuit court, southern district New York. Chauncey B. Blair v. H. A. & M. Y. Tilden. Copy answer. E. A. Doolittle, def'ts' att'y, 3 Pine st., N. Y. Filed Feb'y 11, 1870.

35 United States circuit court.

CHAUNCEY B. BLAIR
against
HENRY A. TILDEN AND MOSES Y. TILDEN.

And the said plaintiff, as to the plea of the said defendants by them secondly above pleaded, say that the said plaintiff, by reason of anything by the said defendants in that plea alleged, ought not to be barred from having or maintaining his aforesaid action thereof against the said defendants, because he says that the bill of exchange in the first count of the declaration mentioned was not drawn nor accepted by the defendants without funds, or for the accommodation of W. T. Pelton in that behalf made or delivered to the said last-named W. T. Pelton without consideration, but was made and accepted and delivered upon a good and valuable consideration, and was a valid and subsisting obligation in the hands of the said W. T. Pelton, the payee thereof, against the said defendants, and that there was no such corrupt or usurious agreement, or usurious consideration as in the said plea alleged, and that the
36 said bill of exchange was not endorsed or delivered to this plaintiff in pursuance of the agreement or for the consideration in that behalf in said plea stated, and that the sum in that behalf in said plea alleged was not the consideration of the endorsement and delivery of said bill of exchange to this plaintiff, and that the sum of money therein alleged to have been agreed to be paid or given, was not, nor was any other sum whatever given for any alleged loan or forbearance for the time specified or for any other time, and that the said agreement or transaction in the said plea alleged was not in violation or contrary to the statute of the State of New York or the State of Illinois, and that the plaintiff, had not at the time the said bill was so endorsed and delivered

to him, as in the first count of the declaration stated, any notice of any alleged want of consideration for the drawing, acceptance, and endorsement of the said bill of exchange, and this he, the said plaintiff, prays may be enquired of by the country, and so forth.

CHAREES D. BURRILL,
Plaintiff's Attorney.

(Endorsed:) U. S. circuit court. Chauncey B. Blair ag'st Henry A. Tilden. Replication. Filed Feb'y 17, 1870. C. D. Burrill, pl'ff's att'y.

37 U. S. circuit court.

CHAUNCEY B. BLAIR
v.
HENRY A. TILDEN & AL.

And the said defendants, as to the replication of the plaintiff, whereof he hath put himself on the country, doth the like.

E. A. DOOLITTLE,
Att'y for Defend'ts.

(Endorsed:) U. S. circuit court. Chauncey B. Blair vs. Henry A. Tilden, & al. Similiter. E. A. Doolittle.

38 And afterwards, to wit, at a circuit court of the United States, held at the court-house in the city of New York, in and for the southern district of New York, in the second circuit, the issue so as above joined came on to be tried before the honorable William D. Shipman, circuit judge, without a jury, (the parties hereto having, by stipulation filed, waived a trial by jury,) on the twenty-fourth day of October, 1872.

And the following facts were then and there duly proved and found as questions of fact in this case, as stated in his decision of the cause, and filed with the clerk of this court, that is to say:

U. S. circuit court, southern district of New York.

CHAUNCEY B. BLAIR
vs.
HENRY A. TILDEN AND MOSES Y. TILDEN, partners under the firm-name of Tilden & Company.

This case was tried by the court, the parties thereto having waived a trial by jury, as per stipulation on file.

The court finds the following facts:

First. At the time of the several transactions referred to in
39 the pleadings in this case, and at the time of the commencement of this suit, the plaintiff was a citizen and resident of the State of Illinois, and the defendants, respectively, were at the times aforesaid citizens and residents of the State of New York, and were partners doing business at New Lebanon, in said last-named State, under the firm-name of Tilden & Co.

Second. That the draft upon which this suit is founded, was in the words and figures following, to wit:

$5,000.] CHICAGO, *August 4th*, 1869.

Sixty days after date, pay to the order of myself five thousand dollars, value received, with exchange, and *and* charge to account of—

W. T. PELTON.

To Messrs. TILDEN & CO.,
New Lebanon, N. Y.

[U. S. internal revenue stamps, $2.50. Cancelled.]

(Written across the face:) Accepted, payable at the Bank of North America, New York.

TILDEN & CO.

(Endorsed:) Pay to the order of A. C. Coventry.

W. T. PELTON.
A. C. COVENTRY.

40 Third. That said draft was drawn by said Pelton at Chicago, in the State of Illinois, and sent by him to the defendants at said New Lebanon, and there accepted by them, and, so accepted, was by them returned to said Pelton at said Chicago, and that said Pelton, at the time said transactions took place was, and until long after the maturity of said draft continued to be, a resident of said Chicago and engaged in business there.

Fourth. That said draft was so accepted and returned to said Pelton as aforesaid, for the purpose of being negotiated in said State of Illinois, and in order that the proceeds might be used by him in his business in that State and in the State of Michigan.

Fifth. That said Tilden & Co. accepted said draft solely for the accommodation of said Pelton, in order to aid him in raising funds for carrying on his business, without any consideration or security therefor, and without any funds in their hands to protect the same.

Sixth. That said Pelton was the nephew of one or both of the defendants, and the latter accepted the draft in suit, and had also accepted at other times similar drafts, all for the accommodation of said Pel-
41 ton, and with the understanding with him that they were to be discounted at a certain bank in Chicago, (a bank with which this plaintiff had no connection,) and that said Pelton should take up the drafts at maturity.

Seventh. That the plaintiff, at the time he discounted said draft, had no knowledge whatever of the arrangements or understanding set forth under the sixth head of this finding of facts, or that said draft was mere accommodation-paper accepted by the defendants, without consideration or without security or funds in the hands of the drawees to protect the same.

Eighth. That said Pelton endorsed said draft, and delivered the same to said A. C. Coventry at said Chicago, for the purpose of having the latter effect the negotiation thereof for the benefit of said Pelton, and that said Coventry, through a firm of note-brokers, sold said draft to the plaintiff in this suit, at said Chicago, for the sum of four thousand eight hundred and twenty-five dollars, and no more.

W. D. SHIPMAN, *Judge.*

And in and by said decision filed, he came to the following conclusions of law, and decided as the law applicable to the facts so found, as follows:

Conclusions of law.

SHIPMAN, J.:

42 First. By accepting the draft in question and returning it to the possession of the drawer, the defendants empowered him to negotiate the same, and put it in circulation, by any valid transfer.

Second. The negotiation and transfer having been made in Illinois the validity of that contract is to be determined by the law of that State.

Third. That contract, by the law of Illinois, was valid, except as to interest reserved. That interest having exceeded the rate of ten per centum per annum was forfeited, and cannot be collected either from the drawer or the acceptors; and as to that, the contract with the plaintiff was void as to both; as to the principal, it was valid as to both.

Fourth. Session Laws of Illinois, Jan. 31, 1857, p. 45. The plaintiff is entitled to judgment for the sum of four thousand eight hundred and twenty-five dollars, ($4,825,) being the amount of principal, less the interest illegally reserved, with costs.

WM. D. SHIPMAN, *Judge.*

And thereupon the plaintiff, by his attorney aforesaid, duly excepted to the decision of the court, in these words:

U. S. circuit court.

CHAUNCEY B. BLAIR
vs.
HENRY A. TILDEN AND MOSES Y. TILDEN.

43 Take notice, that the plaintiff excepts to the fourth conclusion of law found by the court, so far as the plaintiff's right of recovery is limited to the sum of four thousand eight hundred and twenty-five dollars, and to the refusal of the court to award to the plaintiff interest, as damages for the withholding payment of that amount from the commencement of this action, and also to the order made by the court, on the trial, permitting the defendants to amend their plea in respect to the amount of the alleged usurious reservation.

Yours, CHARLES D. BURRILL,
Att'y for Pl'ff.

To E. A. DOOLITTLE, Esq.,
Att'y for Def'ts.

And the defendants, by their attorney, duly excepted to said decision in these words:

U. S. circuit court.

CHAUNCEY B. BLAIR
ag'st
HENRY A. TILDEN AND MOSES Y. TILDEN.

The above named defendants, by E. A. Doolittle, their attorney
44 and counsel, hereby excepts to the conclusions of law of his honor Wm. D. Shipman, upon the evidence in this case, and upon his finding of facts thereupon, as follows:

I. These defendants except to the first conclusion of law as contained in the following words, viz:

"By accepting the draft in question and returning it to the possession of the drawer, the defendants empowered him to negotiate the same and put it in circulation by any valid transfer;" and to each and every part thereof separately.

II. These defendants except, as aforesaid, to the second conclusion of law of his honor contained in the following words, viz:

"The negotiation and transfer having been made in Illinois, the validity of that contract is to be determined by the laws of that State;" and separately and especially to so much of said conclusion as decides and determines that the contract of the defendants proved, and upon which this action is brought, is to be determined by the laws of the State of Illinois.

III. These defendants except to so much of the third conclusion of law of his honor as is contained in the following words, viz:

"That contract, by the laws of Illinois, was valid, except as to interest reserved; as to the principal, it was valid as to both," (drawers
45 and the acceptors;) and especially and specifically to so much, and such portions, of said third conclusion of law as finds or determines that the contract of these defendants, to wit, their exceptance of such draft, by the laws of Illinois, was valid, except as to the interest reserved, or that the same was valid or binding upon these defendants, as to the principal, or as to any part thereof.

IV. These defendants except to the refusal of his honor to find, as requested, that defendants, being residents of the State of New York, and having accepted said draft in said State of New York, payable at a bank in the city of New York, for the accommodation of the drawer, without funds and without consideration, under an express promise of the drawer to pay and cancel the same at maturity, these defendants were liable only according to the laws of the State of New York, where their contract was made and to be performed.

V. To his refusal to find, as conclusion of law, that the fact that said draft was to be negotiated in Illinois, and was in fact there negotiated, did not change or vary the rule of law applicable to defendants' contract of acceptance.

VI. To his refusal to find, as conclusion of law, that because
46 said acceptance, before it ever had any valid inception, was negotiated usuriously, was therefore void by and under the laws of the State of New York, where said acceptance was given and was to be performed, and therefore void as to the defendants.

VII. To his refusal to find as a conclusion of law that said acceptance on its face purported to be a contract made under the laws of New York, and was notice to the plaintiff that it was to be construed by and under the laws of the State of New York.

VIII. To his refusal to find as conclusion of law that said acceptance was void as to these defendants.

Lastly, these defendants except to the 4th conclusion of law, to wit: The plaintiff is entitled to judgment for the sum of $4,825, being the amount of principal less the interest illegally reserved, with costs, and to each and every part thereof separately.

Yours &c.,

E. A. DOOLITTLE,
Att'y for Def'ts.

And because none of said exceptions appear upon the record of said trial—

Therefore, on the prayer of said defendants by their said attor-

47 ney, the said judge hath to this bill of exceptions set his hand and seal pursuant to the statute and the rules and practice of this court on this first day of April, A. D. 1873, as yet of the term.

[L. S.] W'M D. SHIPMAN, *Judge.*

E. A. DOOLITTLE,
Def'ts' Att'y.

Settled by consent, March 31, 1873.

C. D. BURRILL, *Plff's Att'y.*
E. A. DOOLITTLE, *Def'ts' Att'y.*

The within bill of exceptions settled by consent.

(Endorsed:) U. S. circuit court. Chauncey B. Blair against Henry A. Tilden, et al. Bill of exceptions. E. A. Doolittle, def'ts' att'y, No. 3 Pine st., New York. Filed April 8, 1873.

48 Circuit court of the United States for the southern dis't of New York.

CHAUNCEY B. BLAIR
vs.
HENRY A. TILDEN & MOSES Y. TILDEN.

Take notice, that the defendants Henry A. Tilden and Moses Y. Tilden, appeal to the Supreme Court of the United States from the judgment of the circuit court of the United States for the southern district of New York, entered on the 27th day of March, in the year of our Lord one thousand eight hundred and seventy-three, (A. D. 1873) in favor of Chauncey B. Blair, plaintiff, against Henry A. Tilden and Moses Y. Tilden, defendants, for the sum of four thousand nine hundred and twenty-five dollars and sixty-five cents, ($4,925.65) and every part thereof.

New York, March 31st, 1873.

Yours &c.,

E. A. DOOLITTLE,
Def'ts' Att'y, No. 3 Pine st., New York.

To C. D. BURRILL, Esq., *Pl'ff's Attorney, &c.*
KENNETH G. WHITE, *Clerk of the Circuit Court.*

49 (Endorsed:) U. S. circuit court. Chauncey B. Blair against Henry A. Tilden et al. Notice of appeal. E. A. Doolittle, def'ts' att'y, No. 3 Pine st., New York. Kenneth G. White, esq., clerk. Filed M'ch 31, '73.

50 Supreme Court of the United States.

CHAUNCEY B. BLAIR
ag'st
HENRY A. TILDEN & MOSES Y. TILDEN.

Know all men by these presents that we, Henry A. Tilden and Moses Y. Tilden, of New Lebanon, Columbia County, and State of New York, and Marvin Sackett, Ira S. Johnson, and Henry J. Whiting, all of New Lebanon, Columbia County, and State of New York, are held and firmly bound unto Chauncey B. Blair, of Chicago, in the State of Illinois, in the sum of ten thousand dollars, ($10,000,) to be paid to the

said Chauncey B. Blair, his executors or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals, dated this twenty-ninth day of March, in the year of our Lord one thousand
51 eight hundred and seventy-three, (A. D. 1873.)

Whereas the above-named Henry A. Tilden and Moses Y. Tilden have presented a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named Henry A. Tilden and Moses Y. Tilden shall prosecute their said writ of error to effect and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise, to remain in full force and virtue.

M. Y. TILDEN. [L. S.]
HENRY A. TILDEN. [L. S.]
MARVIN SACKETT. [L. S.]
IRA S. JOHNSON. [L. S.]
HENRY J. WHITING. [L. S.]

Sealed and delivered in presence of—
JAMES WALLACE.

STATE OF NEW YORK,
County of Columbia, ss:

52 Marvin Sackett, one of the obligors above named, being duly sworn, says, that he is a resident of, and a freeholder within the State of New York, and is worth the sum of twenty thousand dollars over and above all his debts and liabilities and property exempt by law from execution.

MARVIN SACKETT.

Sworn before me this 28th day of March, 1873.
JAMES WALLACE,
Notary Public.

STATE OF NEW YORK,
County of Columbia, ss:

Ira S. Johnson, one of the obligors above named, being duly sworn, says that he is a resident of, and a freeholder within, the State of New York, and is worth the sum of ten thousand dollars over and above all his debts and liabilities and property exempt by law from execution.

IRA S. JOHNSON.

Sworn before me, this 29th day of March, 1873.
JAMES WALLACE,
Notary Public.

53 STATE OF NEW YORK,
County of Columbia:

Henry J. Whiting, one of the obligors above-named, being duly sworn, says that he is a resident of and a freeholder within the State of New

York, and is worth the sum of five thousand dollars over and above all his debts and liabilities and property exempt by law from execution.

HENRY J. WHITING.

Sworn before me this 29 day of March, 1873.

JAMES WALLACE,
Notary Public.

STATE OF NEW YORK,
County of Columbia, ss:

On this 29th day of March, 1873, before me, personally appeared Henry A. Tilden, Moses T. Tilden, Marvin Sackett, Ira S. Johnson, Henry J. Whiting, to me personally known to be the individuals described in and who executed the above bond, and severally acknowledged to me that they executed the same for the purposes therein mentioned.

54 [L. S.]

JAMES WALLACE,
Notary Public.

I approve the foregoing bond as to form and amount, and the sufficiency of the sureties.

April 5th, 1873.

SAM'L BLATCHFORD,
District Judge.

(Endorsed:) U. S. Supreme Court. Chauncey B. Blair ag'st Henry A. Tilden, &c. Bond on writ of error and appeal. E. A. Doolittle, def't's att'ys, No. 3, Pine st. New York. Filed April 7, 1873.

55 UNITED STATES OF AMERICA, *ss:*

To Chauncey B. Blair, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the 2d Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Henry A. Tilden and Moses Y. Tilden are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this fifth day of April, in the year of our Lord one thousand eight hundred and seventy-three.

SAM'L BLATCHFORD,
District Judge.

56 CITY AND COUNTY OF NEW YORK, *ss:*

Edward H. Crittenden, of the city of Brooklyn, being duly sworn, says that on April 8, 1873, at No. 68 William st., New York City, he served the within citation upon C. D. Burrill, esq., attorney for the defendant in error, by handing to and leaving with a clerk in said attorney's office a true copy thereof, said attorney being not in, at about two

o'clock in the afternoon of that day, and at the same time showing to said clerk the within original.

EDWARD H. CRITTENDEN.

Sworn to before me this 8th day of April, 1873.

THOMAS H. COOK,
Notary Public, N. Y. Co.

(Indorsed:) U. S. Supreme Court. Henry A. Tilden et al., pl'ffs in error, against Chauncey B. Blair, def't in error. Citation. Due & timely service of a copy of the within citation is hereby admitted. Filed April 8, 1873.

(Indorsement on cover:) No. 207. Henry A. Tilden and Moses Y. Tilden, plaintiffs in error, vs. Chauncey B. Blair. S. New York C. C. U. S. Filed 3d October, 1873.

SUPREME COURT

OF THE UNITED STATES.

HENRY A. TILDEN AND MOSES Y. TILDEN,

Plaintiffs in Error,

vs.

CHAUNCEY B. BLAIR,

Defendant in Error.

Brief of Plaintiffs in Error.

JOSHUA M. VAN COTT,

Of Counsel.

NEW YORK:
EVENING POST STEAM PRESSES,
41 Nassau Street, corner of Liberty.

1875.

EVENING POST STEAM PRESSES 41 Nassau Street cor Liberty N Y

Supreme Court

OF THE UNITED STATES

HENRY A. TILDEN AND MOSES Y. TILDEN,
Plaintiffs in Error,

vs.

CHAUNCEY B. BLAIR,
Defendant in Error.

Brief for Plaintiffs in Error.

The plaintiffs in error, residents of the State of New York, were sued in the Circuit Court for the Southern District of New York by the defendant in error, a resident of the State of Illinois, as the acceptors of a draft drawn in Illinois on the acceptors, and accepted and payable in New York. The draft and acceptance are as follows:

$5,000. Chicago, August 4th, 1869.

Sixty days after date, pay to the order of myself

five thousand dollars, value received, with exchange, and charge to account of

WILLIAM T. PELTON.

(Written across the face). Accepted, payable at the Bank of North America, New York.

TILDEN & CO.

(Endorsed)—Pay to the order of A. C. Coventry.

W. T. PELTON.
A. C. COVENTRY.

The acceptors interposed the defense that the acceptance was made without funds, for the accommodation of the drawer, and was negotiated in Illinois at a rate of interest exceeding twenty-five per cent. per annum, in violation of the Statutes against usury of the State of Illinois and of the State of New York.

The issue was tried by the court, a jury having been waived.

The court found, as facts, that the draft was accepted in New York, without funds and for the drawer's accomodation; that it was sent to the drawer, who resided at Chicago, the acceptors knowing that it was there to be negotiated; that it was negotiated to the defendant in error at a rate of interest exceeding twenty-five per cent. per annum, he having no knowledge that the acceptance was for the drawer's accommodation; that the Statutes of Illinois allow the taking of ten per cent. for the loan and forbearance of money, and forfeit the interest when more than ten per cent. is exacted, but do not forfeit the principal; and found as a conclusion of law, and decided that the transaction was governed by the law of Illinois; that the negotiation of the draft was unlawful as to the interest and lawful as to the principal sum loaned or advanced; and rendered judgment accordingly.

The plaintiff in error excepted to the said conclusions of law and decision as follows :

1st. These defendants except to the first conclusion of law as contained in the following words, viz.:

"By accepting the draft in question and returning it to the possession of the drawer, the defendants empowered him to negotiate the same and put it in circulation by any valid transfer;" and to each and every part thereof separately.

2d. These defendants except, as aforesaid, to the second conclusion of law of his Honor contained in the following words, viz.:

"The negotiation and transfer having been made in Illinois, the validity of that contract is to be determined by the laws of that State;" and separately and especially to so much of said conclusion as decides and determines that the contract of the defendants proved, and upon which this action is brought, is to be determined by the laws of the State of Illinois.

These defendants except to so much of the third conclusion of law of his Honor as is contained in the following words, viz.:

3d. "That contract, by the laws of Illinois, was valid, except as to interest reserved; as to the principal, it was valid as to both drawers and the acceptors;" and especially and specifically to so much and such portions, of said third conclusion of law as finds or determines that the contract of these defendants, to wit, their acceptance of such drafts by the laws of Illinois, was valid, except as to the interest reserved, or that the same was valid or binding upon these defendants, as to the principal, or as to any part thereof.

4th. These defendants except to the refusal of his

Honor to find, as requested, that defendants, being residents of the State of New York, and having accepted said draft in said State of New York, payable at a bank in the city of New York, for the accommodation of the drawer, without funds and without consideration, under an express promise of the drawer to pay and cancel the same at maturity, these defendants were liable only according to the laws of the State of New York, where their contract was made and to be performed.

5th. To his refusal to find, as conclusion of law, that the fact that said draft was to be negotiated in Illinois, and was in fact there negotiated, did not change or vary the rule of law applicable to defendant's contract of acceptance.

6th. To his refusal to find, as conclusion of law, that because said acceptance, before it ever had any valid inception, was negotiated usuriously, was therefore, void by and under the laws of the State of New York, where said acceptance was given and was to be performed, and therefore void as to the defendants.

7th. To his refusal to find as a conclusion of law that said acceptance on its face purported to be a contract made under the laws of New York, and was notice to the plaintiff that it was to be construed by and under the laws of the State of New York.

8th. To his refusal to find as conclusion of law that said acceptance was void as to these defendants.

Lastly, these defendants except to the fourth conclusion of law, to wit: The plaintiff is entitled to judgment for the sum of $4,825 being the amount of principal less the interest illegally reserved, with costs, and to each and every part thereof separately.

POINTS.

I.—The acceptance had no inception or validity as a contract, while in the hands of the drawer. And it could not acquire validity through a usurious contract.

11 New York R., 168, Catlin *v.* Gunter.
30 Id., 259, Jewell *v.* Wright.

II.—Parties to negotiable paper are liable according to the law of the place where their respective contracts are *made* or where their contracts are to be *performed* when made and to be performed at different places.

Story Confl. L. §§ 314 to 322.
Westlake on Intern. L. marg. pp. 212 to 229.
Wharton's Confl. L., §§ 450 to 465.
2 Kents C., p. 458 *et seq.*
19 N. Y. R., 436, Everett *v.* Endryes.
3 Id., 266, Hyde *v.* Goodnow.
9 Id., 280, Cook *v.* Litchfield.
33 Id., 615, Lee *v.* Selleck.
30 Id., 259, Jewell *v.* Wright.
11 Id., 437, Thatcher *v.* Morris.

Where any fact exists to take the case out of the general law, it must be pleaded.

19 N. Y., 436, 439, Everett *v.* Vendryes.
11 Id. 437, 439, Thatcher *v.* Morris.

III.—This acceptance is a contract made and to be

performed in New York, and is governed by the law of New York.

By the law of New York, exacting greater interest than seven per cent. renders the contract illegal and void. If this acceptance had been negotiated in New York it could not be enforced there.

By the law of Illinois, exacting greater interest than ten per cent. is illegal.

The fact that the acceptors knew that the draft was to be negotiated in Illinois is legally inconsequential. Such a draft is negotiable anywhere, and nothing is derived from consent where no consent is needed.

That the draft was accepted, and was payable in New York, appeared on its face and was notice to all the world; and the acceptors' liability on their contract could not be varied by the place where the drawer or holder transferred the obligation. The contract which transferred the acceptance to the defendant in error, violated the law both of New York and of Illinois.

IV.—Tested by the law of New York, the negotiation of the draft was unlawful, and the holder cannot enforce it against the accommodation acceptors.

Tested by the law of Illinois, the negotiation of the draft was unlawful.

The statute of New York does not permit a New York corporation to avoid a contract for usury (50 N. Y. R., 95, Central Nat. Bank *v.* Pratt). But if the usurious contract is made by a National Bank, the interest is forfeited by the general banking act, which in such case supersedes the State law (11 Blatch. R., 243, *in re.* Wild, 115 Mass. R., 539, Central Nat. Bank *v.* Pratt). This results from the paramount au-

thority of the nation, which controls a corporation existing under an act of Congress. But the State of Illinois cannot extend its penal legislation to the State of New York, and substitute its severer or milder penalties in place of those imposed by the law of New York upon contracts made in New York or elsewhere, and sought to be enforced in the latter State.

A contract for the payment of money depends for its validity upon the law of the place where it is stipulated to be paid. But it is conceded that a contract for the payment of money is valid in the State where it is stipulated to be paid, if made without an intent to evade the law of that State, even if it stipulates for a higher rate of interest than is there allowed, provided it does not also stipulate for a higher rate of interest than is allowed by law where the contract is made; and, conversely, that it is valid if it stipulates for a rate of interest higher than is lawful in the State in which the contract is made, if not higher than is lawful in the State in which the contract is to be performed. But if the rate of interest is higher than is allowed by the law of the State in which the contract is made, and higher than is allowed by the law of the State in which the contract is to be performed, the contract will not be enforced in the latter.

It is an exercise of comity by the State of New York, when she permits her citizen to be sued in her courts to enforce a contract made in another State, to pay a higher rate of interest than her own policy and law allow. That comity is extended only to a contract entirely lawful in the sister State, and not to a contract made in express violation of the law of that State, and of its own policy and law. In the case of such a contract, both States punish the illegality; the courts of one inflicting the milder penalty of a forfeiture of the interest; the courts of the other inflicting the severer retribution of a forfeiture of both principal and interest. While the sterner penalty of the New York law has no extra-territorial operation in the State and

in the courts of Illinois, so the milder penalty of the Illinois law has no extra-territorial operation in the State of New York, and will not be imported there by a strained comity to mitigate the penal severity of its own law. The courts sitting in New York, and adjudicating upon a New York contract, will find in the law and the policy of New York the rule by which to determine the rights of the parties in such a case.

Confessedly the contract for the endorsement of this acceptance to the defendant in error, violated the *lex loci contractus*, the *lex loci solutionis*, and the *lex fori*. It is admitted that the question here presented for adjudication is of the first impression; but it is respectfully submitted that it should be decided upon the principles and reasons here urged on behalf of the plaintiffs in error, and that the judgment should be reversed.

JOSHUA M. VAN COTT,
Of Counsel for Plaintiffs in Error.

SUPREME COURT

OF THE UNITED STATES.

HENRY A. TILDEN & CO.,

Plaintiffs in Error,

vs.

CHAUNCEY B. BLAIR,

Defendant in Error.

207.

December Term, 1874.

Brief for Defendant in Error.

JOHN E. BURRILL,

Of Counsel.

NEW YORK:

EVENING POST STEAM PRESSES, 41 NASSAU ST., COR. LIBERTY.

1875.

Supreme Court

OF THE UNITED STATES.

HENRY A. TILDEN and MOSES Y. TILDEN, *Plaintiffs in Error,* *against* CHAUNCEY B. BLAIR, *Defendant in Error.*	*Brief on behalf of Defendant in Error.*

Chauncey B. Blair brought an action in the United States Circuit Court, for the Southern District of New York, against the plaintiffs in error (Tilden & Co.), as acceptors of a draft, dated Chicago, August 4th, 1869, payable sixty days after date, drawn by W. T. Pelton, payable to his own order, and accepted by Tilden & Co., payable at the Bank of North America, New York.

The defence was, that the draft was accepted by Tilden & Co. for the accommodation of the drawer, and that the same was negotiated to the plaintiff, *at Chicago, Illinois*, at a greater rate than ten per cent., in violation of the laws of New York, where the legal interest is seven per cent., and also of Illinois, where the legal interest is ten per cent per annum. (Case, fol. 10.)

The special pleas set up that the amount paid by Blair for the acceptance was $4,737.50, whereas the evidence established, and the Court found as a fact, that the amount was $4,825.

The action was tried before the Court without a jury, which was waived by stipulation filed in open Court.

The facts are set forth in the decision of the Court, which forms a part of the record.

The Court has found that the draft was accepted without consideration, but that Blair had no notice or knowledge thereof. (Fifth, Sixth, and Seventh Findings, fols. 40, 41.)

The Court also found that the draft in suit, and other similar drafts, all for the accommodation of Pelton, the drawer, had been accepted with the understanding with him that they were to be discounted at a certain bank in Chicago, not being any bank with which Blair was connected (Sixth Finding, fol. 18), but that Blair, when he discounted the draft, had no notice of this arrangement or understanding. (Seventh Finding, fol. 41)

The Court also found that the draft was drawn at Chicago, where it bears date, and sent to Tilden & Co., at New York, where it was accepted, and by them returned to the drawer, Pelton, at Chicago, where the latter resided and was engaged in business, for the purpose of being negotiated in Illinois, in order that the proceeds might be used by Pelton in his business in that State, and in Michigan. (Third and Fourth Findings, fols. 40, 41.)

The Court also found that Blair *purchased* the draft and paid four thousand eight hundred and twenty-five dollars therefor (Eighth Finding, fol. 41), and that when he took the draft Blair had no knowledge that the draft was accepted without consideration, or of any understanding between Pelton and the acceptor that the draft was to be negotiated at any particular bank. (Seventh Finding, fol. 41.)

On these facts the Court found these conclusions of law (fol. 42):

FIRST.—By accepting the draft in question, and returning it to the possession of the drawer, the defendants empowered him to negotiate the same, and put it in circulation by any valid transfer.

SECOND.—The negotiation and transfer having been made in Illinois, the validity of that contract is to be determined by the law of that State.

THIRD.—That contract, by the law of Illinois, was valid except as to interest reserved. That interest, having exceeded the rate of ten per cent. per annum, was forfeited, and cannot be collected, either from the drawer or the acceptors. As to that, the contract with the plaintiff was void as to both: as to the principal, it was valid as to both.

Session Laws of Illinois, Jan. 31, 1857, p. 45.

FOURTH.—The plaintiff is entitled to judgment for the sum of four thousand eight hundred and twenty-five dollars ($4,825), being the amount of principal, less the interest illegally reserved, with costs.

(See Findings, fol. 42.)

The Bill of Exceptions contains nothing but the pleadings and the findings of the Court, and the exceptions taken subsequently to the decision and not during the progress of the trial.

The defendant claimed that the contract was to be governed by the laws of the State of New York, which forfeited the principal of money loaned as well as the interest, and not by the laws of Illinois, by which interest alone is forfeited.

The laws of Illinois, relating to interest on loans of money, are to be found in Gross, 3d ed., 1869, of the Statutes of Illinois, pp. 371, 372, §§10, 11, 12, 13, 14, 15, 16, and are as follows:

Act of Jan. 31st, 1857, §2: In all contracts hereafter to be made, whether written or verbal, it shall be lawful for the parties to stipulate or agree that ten per cent. per annum, or any less sum of interest, shall be taken and paid upon every $100 of money loaned or in any manner due and owing from any person or corporation in this State.

Ibid, §3: If any person or corporation in this State shall contract to receive a greater rate of interest than ten per cent. upon any contract, verbal or written, such person or corporation shall forfeit the whole of said interest so contracted to be received, and shall be entitled only to recover the principal sum due to such person or corporation.

Ibid, §4: All laws in conflict with this law, and all laws providing for penalties for taking or contracting for more than the legal rate of interest, are hereby repealed.

Act of Feb. 12th, 1857, §1: Where any contract or loan shall be made in this State, or between citizens of this State, and any other State or country bearing interest at any rate which was or shall be lawful according to any law of the State of Illinois, it shall and may be lawful to make the amount of principal and interest of such contract or loan payable in any other State or Territory of the United States, or in the City of London in England; and in all such cases such contract or loan shall be deemed and considered as governed by the laws of the State of Illinois, and shall not be affected by the laws of the State or country where the same shall be made payable. And no contracts or loans which has (have) been heretofore made or entered into, bearing an interest at a rate which was legal, according to the laws of this State at the time when the same was made or entered into, shall be invalidated or in any wise impaired or affected by reason of the same having been made payable in any other State or country.

Act of Feb. 16th, 1857, §1: It shall be lawful for any person or corporation, borrowing money in this State, to make notes, bonds, bills, drafts, acceptances, mortgages, or other securities, for the payment of principal or interest, at the rates authorized by the laws of this State, payable at any place where the parties may agree, although the legal rate of interest in such place may be less than in this State; and such notes, bonds, bills,

drafts, acceptance, mortgages, or other securities, shall not be regarded or held to be usurious, nor shall any securities taken for the same, or upon such loans, be invalidated in consequence of the rate of interest of the State, kingdom, or country where the paper is made payable being less than in this State nor of any usury or penal law therein.

Ibid, §2: No plea of usury, nor defence founded upon an allegation of usury, shall be sustained in any court in this State, nor shall any security be held invalid on an allegation of usury where the rate of interest reserved, discounted, or taken, does not exceed that allowed by the laws of this State in consequence of such security being payable in a State, kingdom, or country, where such rate of interest is not allowed.

Ibid, §3: It shall be lawful for all parties, loaning money in this State, to take, reserve, or discount interest upon any note, bond, bill, draft, acceptance, or other commercial paper, mortgage or other security, at any rate authorized by the laws of this State, whether such paper or securities for principal or interest be payable in this State or in any other State, kingdom, or country, without regard to the laws of any other State, kingdom, or country; and all such notes, bonds, bills, drafts, acceptances, or other commercial paper, mortgages, or other security, shall be held valid in this State, whether the parties to the same reside in this State or elsewhere.

The defendants in error insisted—

1st, That the validity of the contract in suit was to be determined by the law of Illinois, and not by the law of New York.

2d, That whether the purchase of the draft by Blair, at the rate of interest stated in the evidence, was in violation of the Illinois Statute on that subject, was to be determined by the construction of that statute as settled by the courts of Illinois.

3d, That the evidence did not establish any usury, nor prove the special pleas.

4th, That Blair was a bona-fide purchaser, without notice of any failure of consideration, or other defect in the acceptance, and that he was entitled to recover the full face of the draft and interest; and they excepted to so much of the decision of the Court as limited the recovery to the amount paid for the draft.

The points to be discussed are:

1. That the questions presented in the Court below by the plaintiff in error cannot be reviewed by this Court.

2. That the plaintiff below was entitled to judgment on the facts found by the Court.

3. That even if the record is in a condition to enable this Court to review the questions raised below, then that there was no usury.

4. That whether the purchase of the draft by Blair, at the rate of interest stated in the evidence, was in violation of the Illinois statute on that subject, is to be determined by that statute, and that the judicial decision of that State as to its construction should have controlled the Court below.

5. That Blair was a bona-fide purchaser, without notice of any failure of consideration or other defect in the acceptance, and that he was entitled to recover the full face of the draft and interest.

6. That the Court can on this record give Blair the benefit of the exception taken by him to the construction of law found by the Court below on the facts, as settled and stated in the decision.

POINTS.

FIRST.—The decision of the Court by which the issues were tried without a jury, under the Act of March 3d, 1865, 13 U. S. Stat. at Large, 501, is final and conclusive as to the facts so found. The Bill of Exceptions does not contain any of the evidence taken at the trial, so that no questions in respect to evidence are presented. The only exceptions taken by the plaintiffs in error were taken subsequent to the decision of the Court, and not during the progress of the trial, so that there is nothing which the Court can review.

Cooper v. Omohundro, 19 Wall, 65.

That case decided that the phrase, "rulings of the Court during the progress of the trial," does not include findings of the Court, nor the conclusions of the Court embodied therein.

Crew v. Brewer, 19 Wall., 70.
Insurance Co. v. Folsom, 18 Wall., 237.
Town of Ohio v. Marcy, id., 552.

Thus, under the fourth section of the act referred to, the only question which can be reviewed is whether the facts found were sufficient to support the judgment.

The Court has not included in its findings any fact upon which any of the questions presented to the Court below by the plaintiff in error can be raised.

There is no finding that the transaction was a loan, nor that it was a cover for a loan, nor that there was any intent to evade the statutes, which are necessary to constitute usury, and to support that defence.

United States v. Wagginer, 9 Peters, 378.
Scott v. Lloyd, id., 418.
Hogg v. Ruffner, 1 Black., U. S., 115.
Lafayette Bank v. State Bank, 4 McLean, 208.
Judy v. Gerard, id., 360.

On the contrary, the finding is that Blair purchased the draft in good faith, and for value, and without notice. There is, therefore, no finding on which the question of usury can be presented, and, consequently, nothing to bring under consideration the Illinois statutes, which are applicable only to interest on loans of money. In short, as the defence was that the transaction was a loan at usurious interest, and the Court has found that the transaction was not a loan, but a bona-fide purchase, the defence utterly failed, and no question of usury, or of the construction of statutes relating to usury, arises in the case.

It becomes wholly immaterial whether the Court was right or wrong in deciding that the contract was to be determined by the laws of Illinois, because neither the Illinois nor the New York statutes have any application except to loans.

SECOND.—It necessarily follows from the foregoing that, on the facts found by the Court, the plaintiff below was entitled to judgment, because, while the Court does not find the transaction to be a loan, it does find that Blair purchased the acceptance in good faith, and for value, and without notice of any of the matters alleged by way of defence. Of course, so long as Blair purchased and paid for the acceptance, the fact that there was no consideration as between the original parties is wholly immaterial. (See cases above cited.)

But assuming that this Court will consider the question sought to be raised, we submit the views expressed in the following points.

THIRD.—There is a material variance between the proof and the allegations of the plea. The latter alleges that the amount paid by the plaintiff was $4,737.50, and avers a loan of that amount, and an agreement to pay for such loan 2½ per cent. per month, whereas the evidence shows that the amount paid by the plaintiff was $4,825.

The rule is well established in the courts of the United States, and in the courts of Illinois, and also of New York, prior to the passage of the Code of the latter State, that variance between the pleadings and the proof is fatal.

In Griggs v. Howe, 31 Barbour, N. Y. Supreme Court Reports, 102, the Court say: "One of the defences was usury, and the defendants were required to show a corrupt and illegal contract. * * * * This contract they were bound to set up in the answer, giving its terms, and the amount of the usurious premium or interest taken by the lender, and the usury must be proved as set up in the pleading,"—citing,

Vroom v. Ditmas, 4 Paige (N. Y.), 526.
New Orleans Gaslight Co. v. Dudley, 8 id, 457.
Curtis v. Masten, 11 id, 17.
Cloyes v. Thayer, 3 Hill (N. Y.), 564.
Morse v. Cloyes, 11 Barbour (N. Y.), 100.
Gould v. Horner, 12 id., 601.

FOURTH.—The validity of the contract in question depends on the laws of Illinois, and the rights of the parties are to be determined by reference thereto.

1. The Court having found that the acceptance was made without consideration, and for the accommodation of the drawer, Pelton, and that it had no validity until it was negotiated, and that it was first negotiated in the State of Illinois, it follows that it had its legal inception there, and that the only contract made by the defendants, or created by the transfer of the acceptance, was made there.

2. The draft is dated at Chicago, and that was the place of residence, and place of business, of Pelton, the drawer; and the Court having found and decided that the acceptance was made and delivered for the purpose of being negotiated in Illinois, and used in the business carried on by the drawer in that State, it is very clear that the acceptance was made with intentional and direct reference to the laws of Illinois.

3. By the form of the contract, the defendants are the principal debtors, and their liability the same as the maker of a note. Were this a note dated in Illinois, and there delivered and negotiated, the contract would be an Illinois contract, although it was to be performed in New York; and in such case the parties to whom the note was negotiated had the right to deal, either with regard to the laws of Illinois or New York.

Miller v. Tiffany, 1 Wallace (U. S.), 298, 310.

In that case the Court held that a person contracting for the payment of interest may contract to pay it either at the rate of the "place of contract," or at that of the "place of performance," as one or the other may be agreed on by himself and the

creditor; and the fact that the rate of the place at which it is agreed that it shall be paid is higher than the rate in the other place, will not expose the transaction to the imputation of usury unless the place agreed on was fixed *for the purpose* of obtaining the higher rate, and *to evade* the penalty of an usurious contract at the other place.

Justice Swayne, in delivering the opinion on page 310, after adverting to the fact that contracts are usually governed by the law of the place of performance, says: "The converse of this proposition is also well settled. If the rate of interest be higher at the place of the contract than at the place of performance, the parties may lawfully contract in that case, also, for the higher rate,"—citing,

Depeau v. Humphrey, 20 Martin (La.), 1 (erroneously cited, in 1 Wallace, U. S., p. 310, as 20 Howard, 1).

Chapman v. Robinson, 6 Paige (N. Y.), 634, where substantially the same language is used by the Court.

The same point is decided in—

Bank of the State of Georgia v. Lewin, 45 Barbour (N. Y.), 340.

City Savings Bank v. Bidwell, 29 id., 329.

Balme v. Wombough, 38 id., 352.

4. Although the signature of the defendants was affixed to the draft in this State, it was not delivered here, but was sent to Pelton, the drawer, at Chicago, by letter, and it was there received and there negotiated by Pelton in accordance with the intention of the defendants. The following cases decide that under such circumstances the acceptance is to be treated as made in Illinois:

Lee v. Selleck, 33 N. Y. (Court of Appeals), 615, where the precise point was decided; see opinion of Porter, J., p. 618.

Cook v. Litchfield, 9 id., 280; opinion of Ruggles, Ch.-J., p. 290.

Hyde v. Goodnow, 3 id., 270; opinion of Harris, J., p. 270.

FIFTH.—Inasmuch as the contract is to be governed by the laws of Illinois, the judicial decisions of the courts of that State as to the construction of these statutes should be adopted; or, in other words, the question whether the purchase of the draft by Blair, under the circumstances, and at the rate found by the Court, was a violation of the usury laws of Illinois, or was an usurious transaction within the reach of those statutes, should be determined by the judicial decisions of that State.

Bell v. Momson, 1 Peters, 360.

Green v. Neal, 6 id., 291,

D'Wolf v. Roland, 1 id., 476.

Van Rensselaer v. Kearney, 11 How., 297, 319.

McNiel v. Holbrook, 12 Peters, 84.

Leffingwell v. Warren, 2 Blatch., 599.

SIXTH.—In construing these Illinois statutes of usury, the Courts of that State have held that they do not affect the right to *purchase* negotiable commercial paper at any price which may be agreed upon between the parties, and, consequently, if a party takes commercial negotiable paper in good faith, before maturity, and without notice or knowledge that it was drawn or accepted or made without consideration, but believing that it was made for a good and valid consideration, such holder may purchase it

at whatever price may be agreed upon, and although the discount be made at a greater rate of interest than ten per cent. per annum, the transaction is not affected by the usury statutes.

Raplee v. Morgan, 2 Scammon, 561.
Sherman v. Blackman, 24 Illinois, 347.
Also see Hogg v. Rufner, 1 Black, U. S., 115.
Moncure v. Dermott, 13 Peters, 345.

These decisions depend, doubtless, on the principle that usury is the taking of illegal interest upon a loan of money, and that if there be no loan there can be no usury. This is elementary law: a man who purchases negotiable commercial paper cannot be said to make a loan of money, provided he purchased it in good faith and believes that it was made for a good and valid consideration. If the transaction was colorable, and a mere pretext, a cover for a loan, then, of course, it will be treated as a loan, and will be covered by the statutes against usury. In the present case the fact is clearly proved by the Court that the plaintiff had no knowledge of the origin of the acceptance or that it was accommodation paper, and that it was *sold* to the plaintiff for four thousand eight hundred and twenty-five dollars. Under these circumstances, we claim that the plaintiff was a bona-fide purchaser of the acceptance, and was entitled to recover the full face of it and interest from maturing, and that the Court below erred in allowing the plaintiff merely the amount paid, and so forfeiting all interest up to the time of the decision, which was done on a construction of the contract in question, and of the Illinois statutes, contrary to the judicial decisions of that State.

SEVENTH.—If this Court come to the conclusion that the contract is to be regarded as an Illinois contract,

and is to be governed by the usury law of that State, but at the same time hold that the judicial decisions of that State do not control, then the Court below was correct in holding that the taking of usurious interest did not affect the plaintiffs' right to recover the principal, but that the interest only was forfeited.

Act of January 31st, 1857, Gross, edition 1869, Statutes of Illinois, p. 371, § 3.
Hansbrough v. Peck, 5 Wall., U. S., 497.

EIGHTH.—It will thus be seen that the defendant below (plaintiff in error here) has no cause to complain of the judgment of the Court below. It will be seen, also, that by the judgment Blair has recovered less than he was entitled to on the conceded facts in the case; that while the acceptance was $5,000 he recovered but $4,825, thus losing $175, and that in addition he lost the interest from 6th Oct., 1869, to 2d March, 1873, when the judgment was rendered. The question now is, whether we can, on this record, obtain the relief we are so clearly entitled to. All the facts have been proved by the Court, and are set forth in the record. The question is, what judgment was the plaintiff below entitled on these facts? Our exception to the finding of the Court as to the amount of the recovery is part of the Bill of Exceptions, and of the record now before the Court. What good reason is there why this Court should not correct the error in the judgment of which we complain? A writ of error issued on our behalf would be of no service. It could bring nothing here in addition to what is here already; and what use or necessity in our bringing a second writ of error? It would be the merest matter of form. What good purpose could it accomplish? The sole object of a writ of error is to bring into the Appellate Court the record from the Court below in order that it may be renewed. If the

record has already been brought up on one writ of error, why should a second be issued?

The 2d section of the Act of June 1, 1872 (17 U. S. Statutes at Large, p. 197), provides that this Court may affirm, modify, or reverse the judgment, decree, or order, brought before it for review, *or may direct such judgment, decree, or order, to be rendered*, or such further proceeding to be had, by the inferior Court, *as the justice of the case may require*. This provision is similar to that contained in section 330, of the Code of Procedure, by which appeals in the State of New York are governed.

According to the decisions of the Courts of that State, where the facts are found by a Court without the intervention of a jury, it is competent and proper for the appellate tribunal to render such judgment as upon the facts conceded or established either party was entitled to.

Marquat v. Marquat, 12 N. Y., 336.
Beach v. Cooke, 28 id., 508.
Edmonston v. McLoud, 16 id., 543.
Hannay v. Pell, 3 E. D. Smith, 432.
Purchase v. Matteson, 25 N. Y., 211.
Brownell v. Winnie, 29 id., 400.

In Marquat v. Marquat, 12 N. Y. R. (2 Kern), Justice Johnson says: "When the facts are ascertained, upon the trial, either by special verdict or any other form of finding allowed by law, the general question, Which party is entitled to judgment? arises upon appeal; and in such cases a judgment, disposing of the whole cause, may be given at General Term, notwithstanding such judgment be adverse to that given at the Special Term."

In Beach v. Cooke, 28 N. Y. R., 508, the Court, on appeal, rendered such judgment as in their opinion should have been rendered, and say, p. 538, "It is insisted that if the decision of the Referee was in any respect erroneous, the Supreme Court should not have

pronounced a final judgment on the appeal, but should have ordered a new trial. If any material error had occurred on the trial, or in the findings of fact by the Referee, a new trial would doubtless have been necessary; but the only error appearing in the case was the judgment which he directed to be entered, as the legal result from those facts. That error it was the province of the Supreme Court to correct; it has been corrected by the entry of the appropriate judgment, and that judgment should be affirmed, with costs."

In Hannay v. Pell, 3 E. D. Smith R., 437, Ch.-Justice Ingraham says: "If the facts are all found by the Referee, and the appellant does not object to the decision upon the facts, there is no ground for setting aside the report in that respect.

"When the facts are correctly found, and the error is one of law in giving the judgment, the Court on appeal may give the judgment, for which the Referee should have reported."

The attention of the Court is also called, in this connection, to the sixth section of the aforesaid act of June 1, 1872, which provides that the practice and proceedings in the Federal Courts, in common law actions, shall conform to those of the State Courts. It may be that this statute is not applicable to the present case, but, whether so or not, if it does not strengthen, it does not weaken our position. Under all the circumstances, especially in view of the second section, of the statute above referred to, which extends, as well as modifies, the power of this Court, in respect to the judgments to be rendered by them, we submit that this Court should correct the error of which we complain, and direct the Court below to render judgment in favor of Blair for the face of the acceptance and interest from maturity.

JOHN E. BURRILL,

Of Counsel for Blair.

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JOHN E. BURRILL,

Of Counsel for Blair.

Supreme Court

Of the United States.

HENRY A. TILDEN & CO.,

Plaintiffs in Error.

vs.

CHAUNCY B. BLAIR,

Defendant in Error.

DECEMBER TERM 1874.

Brief for Defendant in Error.

SUPREME COURT OF UNITED STATES,

NO. 207.

December Term, 1874.

HENRY A. TILDEN AND MOSES Y. TILDEN,
Plaintiffs in Error.

VS.

CHAUNCY B. BLAIR, *Defendant in Error.*

BRIEF FOR DEFENDANT IN ERROR.

This was an action in the United States Circuit Court, Southern District of New York, brought by Blair, the defendant in error, against the plaintiffs in error, to recover the amount of a

Draft for $5,000, dated Chicago, August 4th, 1869, drawn by W. C. Pelton, to his own order, at 60 days, on Tilden & Co., the plaintiffs in error, New Lebanon, N. Y. Accepted,

TILDEN & Co.

Endorsed, W. L. PELTON,
A. C. COVENTRY.

Issue was joined on a plea of usury and the cause submitted to the Court for trial. The Court under the act of March 3rd, 1865, found the facts and conclusions of law as shown pp. 6 to 8 and in bill of exceptions pp. 13 to 15 of the printed record.

For convenience, we copy the conclusions of law and briefly recapitulate the facts found, which are as follows:

That the draft in queston was drawn at Chicago, Ill., by Pelton a resident of that city, and sent to plaintiffs in error, at New Lebanon, and accepted and returned by them to Pelton for the purpose of being negotiated in Illinois. That Tilden & Co accepted the draft solely for the accommodation of Pelton, and had before accepted other similar drafts with an understanding that they were to be discounted at a bank in Chicago with which the defendant in error had no connection, and were to be taken up by Pelton at maturity. That Pelton, at Chicago, endorsed the draft and delivered it to A. C. Coventry to be by him negotiated for his (Pelton's) benefit, and Coventry through a firm of note brokers sold it to Blair for $4,825 and no more; but that Blair, at the time he discounted the draft, had no knowledge whatever of the arrangement or understanding between Pelton and Tilden & Co., or that the draft was mere accommodation paper, accepted without consideration, or security, or funds in the hands of the drawers to protect it.

The Court found the conclusions of law as follows:

FIRST.—By accepting the draft in question and returning it to the possession of the drawer, the defendants empowered him to negotiate the same and put it in circulation by any valid transfer.

SECOND.—The negotiation and transfer having been made in Illinois was valid, except as to the interest reserved. That interest having exceeded the rate of ten per cent. per annum was forfeited and cannot be collected either from the drawers or acceptors. As to the principal, it was valid as to both.

FOURTH.—The plaintiff is entitled to judgment for the sum of $4,825, being the principal less the interest illegally reserved, with costs.

The plaintiff in error, excepted to the 1st, 2nd and 4th conclusions of law and to so much of the 3rd as found that the contract, except as to interest reserved, was valid, and was binding on the defendant to as the principal.

There is also reference to some supposed requests by the defendant for special findings, but as neither the evidence nor the requests are shown, we do not notice them.

The defendant in error, excepted to the 4th conclusion of law so far as it limited his right of recovery to the $4,825, and to the refusal of the Court to allow interest. (P. 15 printed record.)

Passing by, for the present, the finding of the Court below, which was excepted to by the defendant in error, two main questions are presented for the consideration of this Court:

FIRST.—By the law of which State, Illinois or New York, is the contract governed as to its validity and effect?

SECOND.—If governed by the law of Illinois, how does that law affect this contract under the peculiar facts of this case?

We submit:

FIRST.—That the draft and its negotiation constitute an Illinois contract, and consequently that the rights and liabilities of the parties are to be determined by the law of Illinois; and

SECOND.—That Blair being a *bona fide* purchaser of the draft without notice of the facts of its origin, is by the law of Illinois, entitled to recover the entire amount both of principal and interest of the draft.

The draft never took effect until negotiated in Illinois. Though Tilden & Co. wrote their names on it in New York, it afterwards existed merely as it were *in escrow*, until finally delivered in Illinois. After writing their names on the draft, they returned it to Illinois; it is not said how. They had a right at any time afterwards, until the draft was negotiated to erase their names. Such a writing of their names was no more binding than if it had been a mere signature across the face of a printed blank. It was only one step towards the execution of a draft just as would be the printing of a blank,

and it is equally as immaterial where the names were written, as it would be wheere the blank was printed. It is also immaterial whether after writing their names, they carried it personally to Illinois or sent it by mail to be used there. Going to Illinois and carrying the draft with their names on it, intending to permit its use in that State; they could on their arrival there, use it or destroy it and write their names on another to be used instead of it,—immaterial which. All previous steps would be parts of the mere mechanical processes in preparing the draft, of no binding force until after actual delivery.

This idea is in accordance with the whole tenor of the authorities and is fully recognized by the New York Courts.

Cook v. Litchfield, 5th, Selden p. 290.
Hyde v. Goodnow, 3rd, Comst. 270.
Lee v. Sellick, 33rd, N. Y. 615.

It is the same then as if the acceptors, at the time of the transaction, had, like the other parties, resided in Chicago or had been temporarily there, where the whole transaction substantially took place.

The only fair presumption is that the draft was made payable in New York as a mere matter of convenience and without any reference to New York as the place of the contract. Any presumption of the draft being a New York contract arising from the mere fact that it was on its face, payable in New York, is rebutted by the facts as found by the Court.

The draft then, having been executed by the parties in Chicago, was presented to Blair at that place, with every appearance of its being common business paper, and with nothing to excite suspicion or inquiry, and was purchased by him there in good faith; and we ask with what show of reason, can a severely penal usury law of New York be translated to Illinois to taint and invalidate the transaction?

SECOND.—Admitting it to have been established that this was an Illinois contract, the case of the plaintiffs in error fails, for the reason that the Court gave full effect as against Blair to the Illinois statute, as if the draft had been in his hands tainted with usury. The only forfeiture under that statute is of all interest, and no interest was allowed to Blair. The judgment was only for the money actually paid by him in the purchase of the draft,—not even for the sum for which the draft was made.

We do not deem it necessary to illustrate this point and proceed to the remaining questions in the case.

THIRD:—Blair, the defendant in error, excepted in proper form, to the fourth conclusion of law, found by the Court, so far as his right of recovery was limited to the sum of $4,825, and the refusal of the Court to award to him interest. (See p. 15, printed record.) This distinctly raises the question as to the effect of the Illinois statute under the circumstances of this case, and we ask to have this error against Blair corrected by this Court.

It is immaterial to inquire what effect would be given to the Illinois statute by the Courts of New York, or that the New York Courts have given a harsh construction to the statute of that State as against *bona fide* purchasers of commercial paper tainted with usury in its inception.

The interpretation given by the highest Court of Illinois, to the usury law of that State, will prevail in this Court.

While we are unable to see any semblance of usury in this transaction from beginning to end, yet supposing it to exist as between the acceptors and a purchaser with notice, we submit that according to the Illinois decisions, Blair cannot be affected by it.

The Illinois statute allowed ten per cent. interest and in case of a contract for a greater rate forfeited all interest.

Heminway v. Cropsay, 37th Ill., 357, was a case under a statute allowing ten per cent. interest for borrowed money, and six per cent only in other cases. The Court say, (p. 361,) "The note drew interest at ten per cent. without specifying that it was for money loaned. The Court below gave judgment for only six per cent. interest, although the plaintiff so far as appeared, was a *bona fide* indorsee without notice that the note was not for money loaned. The statute of 1849 which allowed ten per cent. interest to be taken for money loaned only, was in force when the note was given, and the only question necessary to be considered is whether the defense here made can be allowed, and the interest reduced from ten to six per cent. as against an assignee who has bought the note before maturity and without notice. It has

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been repeatedly held by this Court that under the act of 1845, an usurious contract is not void, and the defense of usury can not be made against an innocent indorsee of a negotiable instrument assigned before maturity. It is only where the statute makes usurious contracts absolutely void, that such defense can be set up against such indorsee.

Conklin v. Underhill, 3rd, Scam, 388,
Sherman v. Blackman, 24th, Ill., 345.

There is no substantial difference as to making the defense between the acts of 1845 and 1849 except as to the extent of the forfeiture, and this cannot affect the question as to whether the defense can be made against an innocent holder for a valuable consideration."

This case and those referred to in the text are conclusive of the point, and it follows that the Courts of Illinois would, under the facts found by the Court in the case at bar, have given judgment in favor of Blair for the whole amount of the draft and interest; and we submit that the same rules should govern in this Court.

Were the question as to the effect of the Illinois statute undecided in that State, we should earnestly insist on general grounds and according to the great weight of adjudicated cases that the rule adopted in Illinois is the true one. Every principle of equitable estoppel applies against a party who has put commercial paper on the market, and has

induced innocent parties to invest their money in its purchase.

But all argument is rendered unnecessary by the decision of the highest Court of that State, in the light of which the statute of that State will be interpreted and which are as binding on this Court, in the constructions of the local statute, as if those decisions had been substantially embodied in the statute itself.

Aicardi vs. the State, 19, Wallace 635.
Richmond v. Smith, 15th do 429.
Gutt vs. Minnesota, 9th, do 35.
Randall v. Brigham, 7th, do 523.
Williamson v. Suydam, 6th, do 723.
Van Renselaer v. Kearney, 11th, How. 297.
McNeal v. Holbrook, 12 Peters, 34.
County of Lee v. Clews & Co., No. 79. December Term 1874.

FOURTH.—We then take it as settled, that this transaction having been a purchase by Blair in good faith of the draft in question; and therefore a valid transaction not affected as against him by the Illinois statute relating to usury, the Court erred to his prejudice in so far as his right of recovery was limited to the sum actually paid for the purchase of the draft; and the only remaining question is can this Court in the present case correct that error?

So far as we are advised this precise question has never been decided by this Court.

Blair is entitled to relief. The whole case with all the facts found and the conclusions of law as stated, are before the Court. By no possibility can the Court ever be better informed as to the facts or the alleged error of which we complain. Should Blair be required to sue out a seperate writ of error in his own behalf, he would necessarily bring here this same record without the variation of a word. Is such a duplication of this suit required?

Here is an authorized statement of the facts, and a proper exception by Blair to this one conclusion of the Court. The case then is, under the act of March 3, 1865, as plainly subject to "be reviewed by the Supreme Court," at the instance of Blair as of the Plaintiff in error, and the finding being special, "the review may extend to the determination of the sufficiency of the facts found to support the judgment," not in one particular only, but as a whole. The law discourages needless litigation and abhors a multiplicity of unnecessary suits.

This recent statute has introduced a new kind of practice. Under it a case comes into this Court, much as does a Chancery Cause, with the difference that in the one case the evidence, *in extenso*, comes up for review, while in the other the facts established by the evidence are stated. In the one case the Court is obliged to ascertain the facts from the evidence, and apply the law to the facts so ascertained. While in the other, the Court is spared the labor of ascertaining the facts, and is only required to apply the law to the facts as found and stated by the Court below. Is it not then fairly inferrable that this statute was intended to clothe the Court with equal power of applying the law to the facts stated as it does in a Chancery cause, after having itself ascertained the facts?

We further submit that the practice in the State Courts under similar statutes of an older date is entitled to some consideration in determining the proper practice under this statute. So far as we are advised, the uniform practice in the State Courts, under similar statutes has been, to render or direct the rendition of such judgment as right and justice require under the facts stated and not to confine the review to one alleged error, and to pass by another manifest error, and to require a second appeal or writ of error to be prosecuted as a mere incumbrance to the records of the Court, and an useless expense to the parties.

Chouteau v. Suydam, 21 N. Y., 179.
Purchase v. Matteson, 25 N. Y., 211.
Brownell v. Winnie, 29 N. Y., 400.

But again we submit that the last clause of section 2, of the act of June 1, 1872, removes all doubt on this point, providing as it does that the Supreme Court "may affirm, modify or reverse the judgment, decree or order brought before it for review, or may direct such judgment decree or order, to be rendered or such proceedings to be had by the inferior Court, as the justice of the cause may require."

Does not the *justice of this cause* require that the judgment now before the Court for review, be modified so far as to allow to Blair the amount of the draft and interest? Were the cause before the Court on a writ of error, brought by Blair instead of the opposite party, we take it for granted that the Court would not hesitate to so modify the judgment.

But it is before the Court for review, and we submit that the statutes referred to, avoid all necessity for two suits where one is equally availing, and therefore ask that judgment be given in favor of the Appellee for the amount of the draft and interest at seven per cent., from the time when it came due.

JNO. B. NILES,

Of Counsel for Appellee.

Taney's Circuit Decisions
p. 233.

1 Mur p 9.
2 Dunn 621
16 Barb. 548
24 — do 576
Tyler on Usury 318